

Docket No.: 292745US0PCT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

ATTENTION: MAGDALEN GREENLIEF  
OFFICE OF THE DEPUTY COMMISSIONER  
PATENT EXAMINATION POLICY

RE: Application Serial No.: 10/583,556

Applicants: Naoki HOSOYA, et al.

Filing Date: June 19, 2006

For: BOTTLED BEVERAGE

Group Art Unit: 1761

Examiner:

SIR:

Attached hereto for filing are the following papers:  
Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program Between the  
(1) JPO or (2) UKIPO, and the USPTO w/attached Appendices A Through J

Our credit card payment form in the amount of \$130.00 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. O'Brien

  
Jacob A. Doughty  
Registration No. 46,671

Customer Number

22850

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(703) 413-2220 (fax)

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX A

Explanation of Circumstances Concerning Accelerated  
Examination

**REQUEST FOR PARTICIPATION IN THE PATENT PROSECUTION HIGHWAY (PPH) PILOT PROGRAM  
BETWEEN THE (1) JPO OR (2) UKIPO, AND THE USPTO**

Application No.:	10/583,556	First Named Inventor:	Masaki IWASAKI
Filing Date:	June 19, 2006	Attorney Docket No.:	292745US0PCT
Title of the Invention:	BOTTLED BEVERAGE		

**THIS REQUEST FOR PARTICIPATION IN THE PPH PILOT PROGRAM MUST BE FAXED TO:  
THE OFFICE OF THE COMMISSIONER FOR PATENTS AT 571-273-0125 DIRECTED TO THE ATTENTION OF MAGDALEN GREENLIEF**

**APPLICANT HEREBY REQUESTS PARTICIPATION IN THE PATENT PROSECUTION HIGHWAY (PPH) PILOT PROGRAM AND PETITIONS TO MAKE THE ABOVE-IDENTIFIED APPLICATION SPECIAL UNDER THE PPH PILOT PROGRAM.**

The above-identified application validly claims priority under 35 U.S.C. 119(a) and 37 CFR 1.55 to one or more corresponding JPO application(s) or UKIPO application(s).

The  JPO  UKIPO application number(s) is/are: JP 2003-420910

The filing date of the  JPO  UKIPO application(s) is/are: December 18, 2003

**I. List of Required Documents:**

- A copy of all JPO office actions (excluding "Decision to Grant a Patent") in the above-identified JPO application(s), or a copy of all UKIPO office actions in the above-identified UKIPO application(s).
 

Is attached. (See Appendices A and B attached hereto.)

Is available via Dossier Access System. Applicant hereby requests that the USPTO obtain these documents via the Dossier Access System.

\*It is not necessary to submit a copy of the "Decision to Grant a Patent" and an English translation thereof.
- A copy of all claims which were determined to be patentable by the JPO in the above-identified JPO application(s), or a copy of all claims which were determined to be patentable by the UKIPO in the above-identified UKIPO application(s).
 

Is attached. (See Appendix C attached hereto.)

Is available via Dossier Access System. Applicant hereby requests that the USPTO obtain these documents via the Dossier Access System.
- English translations (where applicable) of the documents in a. and b. above along with a statement that the English translations are accurate are attached. (See Appendices D to G attached hereto.)

Information disclosure statement listing the documents cited in the JPO office actions or UKIPO office actions is attached.

Copies of all documents are attached except for U.S. patents or U.S. patent application publications. (See Appendix H attached hereto. All references not attached have already been made of record in this application.)

[Page 1 of 2]

This collection of information is required by 35 U.S.C. 119, 37 CFR 1.55, and 37 CFR 1.102(d). The information is required to obtain or retain a benefit by the public, which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. FAX COMPLETED FORMS TO: Office of the Commissioner for Patents at 571-273-0125, Attention: Magdalene Greenlief.

**REQUEST FOR PARTICIPATION IN THE PATENT PROSECUTION HIGHWAY (PPH) PILOT PROGRAM  
BETWEEN THE (1) JPO OR (2) UKIPO, AND THE USPTO**

(continued)

Application No.:	10/583,556	First Named Inventor:	Masaki IWASAKI
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**II. Claims Correspondence Table:**

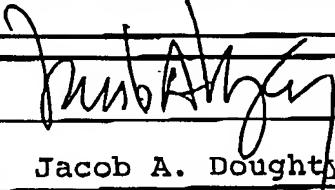
Claims in US Application	Patentable Claims in JP/UKIPO Application	Explanation regarding the correspondence
		(See Appendices I and J attached hereto.)

**III. All the claims in the US application sufficiently correspond to the patentable/allowable claims in the JPO or UKIPO application.**

**IV. Payment of Fees:**

The Commissioner is hereby authorized to charge the petition fee under 37 CFR 1.17(h) as required by 37 CFR 1.102(d) to  Deposit Account No. \_\_\_\_\_

Credit Card. Credit Card Payment Form (PTO-2038) is attached.

Signature		Date	9/21/07
Name (Print/Typed)	Jacob A. Doughty	Registration Number	46,671

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

**Privacy Act Statement**

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) the furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

United States Patent & Trademark Office  
Credit Card Payment Form

<b>Credit Card Information</b>	
Credit Card Type: <input checked="" type="checkbox"/> American Express	
Credit Card Account #: 3787-380062-21005	
Credit Card Expiration Date: December 31, 2008	
Name as It Appears on Credit Card: Carter, Dara L.	
Payment Amount: \$ (US Dollars): 130.00	
Signature: 	Date: September 20, 2007
<b>Credit Card Billing Address</b>	
Street Address 1: Oblon, Spivak, McClelland, Maier & Neustadt, P.C.	
Street Address 2: 1940 Duke Street	
City: Alexandria	
State: Virginia	Zip/Postal Code: 22314
Country: U.S.A.	
Daytime Phone #: (703) 413-3000 Accounting Dept.	Fax #: (703) 413-2220
<b>Request and Payment Information</b>	
Description of Request and Payment Information:	
PETITION FEE (PPH)	
Application No.: 10/583,556	
Patent/Registration No.:	
Docket No.: 292745US	

*If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form, the United States Patent & Trademark Office will not be liable in the event that the credit card number becomes public knowledge.*

Form #: 100440

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745USOPCT

## APPENDIX J

### Claims Correspondence Table

Request for Participation in the Patent  
 Prosecution Highway Pilot Program  
 U.S. Patent Application No. 10/583,556  
 Attorney Docket No. 292745US0PCT

CLAIMS CORRESPONDENCE TABLE

Claims in US Application	Patentable Claims in JP Application	Explanation regarding the correspondence
Claim 1	Claim 1	Claim 1 of the US application is substantially identical to claim 1 of the JP application.
Claim 2	Claim 3	Claim 2 of the US application is substantially identical to claim 3 of the JP application. US claim 1 differs from JP claim 3 only in that US claim 1 depends solely from US claim 1, while JP claim 3 depends from JP claim 1 or JP claim 2.
Claim 3	--	Claim 3 of the US application has been cancelled.
Claim 4	--	Claim 4 of the US application has been cancelled.
Claim 5	--	Claim 5 of the US application has been cancelled.
Claim 6	Claim 2	Claim 6 of the US application is substantially identical to claim 5 of the JP application.
Claim 7	Claim 4	Claim 7 of the US application is substantially identical to claim 4 of the JP application. US claim 7 differs from JP claim 4 only in that US claim 7 depends solely from US claim 1, while JP claim 4 depends from any of JP claims 1-3.
Claim 8	Claim 5	Claim 8 of the US application is substantially identical to claim 5 of the JP application. US claim 8 differs from JP claim 5 only in that US claim 8 depends from US claim 1, while JP claim 5 depends from any of JP claims 1-4.
Claim 9	Claim 6	Claim 9 of the US application is substantially identical to claim 6 of the JP application. US claim 9 differs from JP claim 6 only in that US claim 9 depends solely from US claim 1, while JP claim 6 depends from any of JP claims 1-5.
Claim 10	Claim 7	Claim 10 of the US application is substantially identical to claim 7 of the JP application. US claim 10 differs from JP claim 7 only in that US claim 10 depends solely from US claim 1, while JP claim 7 depends from any of JP claims 1-6.

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 11/190,857  
Attorney Docket No. 276112US0

**CLAIMS CORRESPONDENCE TABLE (cont'd)**

<b>Claims in US Application</b>	<b>Patentable Claims in JP Application</b>	<b>Explanation regarding the correspondence</b>
Claim 11	Claim 8	Claim 11 of the US application is substantially identical to claim 8 of the JP application. US claim 11 differs from JP claim 8 only in that US claim 11 depends from US claim 10, while JP claim 8 depends from JP claims 7.

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX C

Copy of Claims Determined to be Patentable by JPO

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX F

English-Language Translation of Copy of Claims Determined to  
be Patentable by JPO

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX G

Statement Regarding Accuracy of English-Language  
Translations

DOCKET NO: 292745US0PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

NAOKI HOSOYA, ET AL.

SERIAL NO: 10/583,556

FILED: JUNE 19, 2006

FOR: BOTTLED BEVERAGE

: EXAMINER:

: GROUP ART UNIT: 1761

STATEMENT REGARDING ACCURACY OF ENGLISH-LANGUAGE  
TRANSLATIONSCOMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

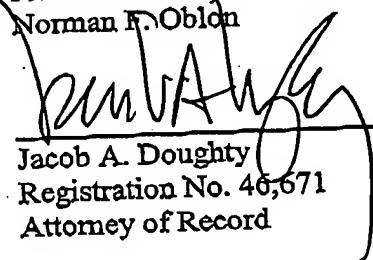
SIR:

Applicants state that the English-language translations provided as Appendices D-F to the Request for Participation in the Patent Prosecution Highway (PPH) Pilot Program and Petition to Make Special under the PPH Pilot Program, filed herewith, are accurate.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

Norman F. Oblon

  
Jacob A. Doughty  
Registration No. 46,671  
Attorney of Record

Customer Number

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Fax: (703) 413 -2220  
(OSMMN 06/04)

2005.2.2

JP 3615213 B1

## CLAIMS

[1] A packaged beverage with a green tea extract mixed therein, comprising the following ingredients (A), (B) and (C):

- (A) from 0.01 to 1.0 wt% of non-polymer catechins,
- (B) oxalic acid or a salt thereof, and
- (C) caffeine,

wherein a content weight ratio  $[(B)/(A)]$  of said oxalic acid or a salt thereof (B) to said non-polymer catechins (A) is from 0.0005 to 0.05, and a content weight ratio  $[(A)/(C)]$  of said non-polymer catechins (A) to said caffeine (C) is 10 to 10000.

[2] The packaged beverage according to claim 1, wherein said beverage further comprises 0.001 to 0.5 wt.% of sodium ion and 0.001 to 0.2 of potassium ion.

[3] The packaged beverage according to claim 1 or 2, wherein said beverage further comprises 0.0001 to 20 wt.% of sweetener.

[4] The packaged beverage according to any one of claims 1 to 3, which has a pH of from 2 to 5.

[5] The packaged beverage according to any one of claims 1 to 4, wherein said green tea extract as a raw material is one obtained by removing caffeine from a concentrate of green tea extract, said concentrate comprising from

2005.2.2

JP 3615213 B1

20 to 90 wt% of non-polymer catechins based on a solid content thereof, such that said content weight ratio [(A)/(C)] of said non-polymer catechins (A) to said caffeine (C) is from 10 to 10000.

[6] The packaged beverage according to any one of claims 1-5, which is filled in a clear container.

[7] The packaged beverage according to any one of claims 1-6, wherein said beverage is a soft drink.

[8] The packaged beverage according to claim 7, wherein said beverage is a carbonated drink, a fruit extract-containing drink, a vegetable extract-containing juice, near water or a sport drink.

(19) 日本国特許庁(JP)

## (12) 特許公報(B1)

(11) 特許番号  
特許第3615213号  
(P3615213)

(45) 発行日 平成17年2月2日(2005.2.2)

(24) 登録日 平成16年11月12日(2004.11.12)

(51) Int.C1.  
A23F 3/16  
A23L 2/38  
A23L 2/52F 1  
A23F 3/16  
A23L 2/38  
A23L 2/00C  
F

請求項の数 8 (全 14 頁)

(21) 出願番号 特願2003-420910 (P2003-420910)  
 (22) 出願日 平成15年12月18日 (2003.12.18)  
 (23) 審査請求日 平成16年2月2日 (2004.2.2)  
 (31) 優先権主張番号 特願2003-204031 (P2003-204031)  
 (32) 優先日 平成15年7月30日 (2003.7.30)  
 (33) 優先権主張国 日本国 (JP)

早期審査対象出願

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 (74) 代理人 100068700  
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 (74) 代理人 100077562  
 弁理士 高野 登志雄  
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 弁理士 中崎 俊夫  
 (74) 代理人 100101317  
 弁理士 的場 ひろみ

最終頁に続く

(54) 【発明の名称】容器詰飲料

(57) 【特許請求の範囲】

【請求項 1】

緑茶抽出物を配合した容器詰飲料であつて、次の成分 (A)、(B) 及び (C)、  
0.01~1.0重量%、

(A) 非重合体カテキン類

(B) シュウ酸又はその塩

(C) カフェイン

を含有し、(B) シュウ酸又はその塩と (A) 非重合体カテキン類との含有重量比 [(B)  
]/(A) が 0.00005~0.05 であり、且つ (A) 非重合体カテキン類と (C)  
/ (A) が 0.00005~0.05 であり、且つ (A) 非重合体カテキン類と (C)  
/ (A) が 1.0~1.0000 である容器詰飲料。

【請求項 2】

更にナトリウムイオン 0.001~0.5 重量%、及びカリウムイオン 0.001~0.2 重量%を含有する請求項 1 記載の容器詰飲料。

【請求項 3】

更に甘味料を 0.0001~2.0 重量% 含有する請求項 1 又は 2 記載の容器詰飲料。

【請求項 4】

pH が 2~5 である請求項 1~3 のいずれか 1 項記載の容器詰飲料。

【請求項 5】

原料緑茶抽出物が、固形分中に非重合体カテキン類を 2.0~9.0 重量% 含有する緑茶抽出物の濃縮物から、(A) 非重合体カテキン類と (C) カフェインとの含有重量比 [(A)  
/ (C)] が 0.00005~0.05 である請求項 1 記載の容器詰飲料。

10

20



(14)

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## フロントページの続き

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審査官 村上 騎児高

(56)参考文献 特開平06-311847 (J P, A)  
特開2003-169603 (J P, A)  
特表平10-501407 (J P, A)

(58)記載した分野(Int. Cl.<sup>7</sup>, DB名)  
A 23 F 3/00 -A 23 F 5/50

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX B

### Notice of Reasons for Rejection

Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX E

English-Language Translation of Notice of Reasons for  
Rejection

Mailing number: 309826

Mailing date: August 24, 2004

## NOTICE OF REASONS FOR REJECTION

Patent Application No.:

JP 2003-420910

Drafting Date:

August 19, 2004

Examiner:

Kimitaka Murakami (ID 8827 4N00)

Attorney:

The Patent Corporate Body Aruga Patent Office  
(and six others)

Applied provisions:

Article 17(2) (iii)

## «Final»

The above-identified application is rejected for the following reasons. If there is any opinion to be submitted in response to this notice, Applicant should file a written response within 60 days from the mailing date of this notice.

## Reasons

The applicant's Amendment filed July 9, 2004 does not meet the requirement stipulated in Article 17(2) (iii) of the Japanese Patent Law, in that the Amendment is deemed to exceed the scope of the description originally filed by the applicant. The reasons are as follows:

The applicant's amendments to claim 8 ("The packaged beverage according to any one of claims 1-7, wherein said beverage is a carbonated drink, a fruit-extract-containing drink, a vegetable-extract-containing juice, near water or a sport drink") is not supported by the specification originally filed by the applicant, and this amendment is not deemed to be obviously inferable from the specification, either. The present application describes that soft drinks, such as a packaged non-green tea beverage, a fruit-extract-containing drink, a vegetable-extract-containing juice, near water, a sport drink and a dietary drink, can be mentioned as the examples of the non-tea-based beverages (see the Detailed Explanation of the Invention, paragraph [0031]). "Soft drink" represent a collective term for non-alcohol drinks, according to the

Mailing number: 309826

Mailing date: August 24, 2004

explanation of Kojien, 5<sup>th</sup> Edition, which is available from Iwanami Shoten. Therefore, it is self-evident that any of a fruit-extract-containing drink, a vegetable-extract-containing juice, near water, a sport drink and a dietary drink is synonymous with a non-alcohol drink. The applicant's new claim 8 fails to include the statement indicating that the beverage is a soft drink and contains no alcohol, so it is obvious that the term "fruit extract-containing drink", for example, encompasses an alcohol-containing drink that was not described in the specification originally filed by the applicant. Furthermore, it does not seem that an alcohol-containing drink is self-evident from the description referring to soft drink.

The claims other than the above are deemed to have no reason to be rejected for this time around. However, if any reason has been found out at a later stage, a subsequent office action will be issued at that time.

This office action is a notice of reasons of rejection involving only the rejection which has been necessitated by the Amendment filed by the applicant responsive to the first office action.

Any inquiry concerning the contents of this Notice should be directed to:

Kimitaka MURAKAMI

The third Patent Examination Department, Biotechnology  
TEL: 03-3581-1101(ext. 3402)

\* \* \* \* \*

整理番号: P06141512

発送番号: 309826 発送日: 平成16年 8月24日

## 拒絶理由通知書

KS0782-1

特許出願の番号

特願2003-420910

X 10/25

起案日

平成16年 8月19日

特許庁審査官

村上 騎見高

8827 4N00

特許出願人代理人

特許業務法人アルガ特許事務所 (外 6名)

+ 2

様

適用条文

第17条の2第3項

&lt;&lt;&lt; 最 後 &gt;&gt;&gt;

この出願は、次の理由によって拒絶をすべきものである。これについて意見があれば、この通知書の発送の日から60日以内に意見書を提出して下さい。

## 理 由

平成16年 7月 9日付けでした手続補正は、下記の点で願書に最初に添付した明細書に記載した事項の範囲内においてしたものでないから、特許法第17条の2第3項に規定する要件を満たしていない。

## 記

補正後の「炭酸飲料、果汁エキス入り飲料、野菜エキス入りジュース、ニアウオーター又はスポーツドリンクである請求項1~7のいずれか1項記載の容器詰オーター又はスポーツドリンクである請求項1~7のいずれか1項記載の容器詰飲料。」(請求項8)は出願当初の明細書に記載した事項ではなく、記載から自明な事項でもない。出願当初の明細書の発明の詳細な説明【0031】には「非茶系容器詰飲料としては、例えばソフトドリンクである炭酸飲料、果汁エキス入り飲料、野菜エキス入りジュースやニアウオーター、スポーツドリンク、ダイエット飲料等が挙げられる。」との記載があり、「ソフトドリンク」は岩波書店「広辞苑第五版」によれば「アルコール分を含まない飲料の総称」であるので、ここにいう「炭酸飲料、果汁エキス入り飲料、野菜エキス入りジュースやニアウオーター、スポーツドリンク、ダイエット飲料」はいずれもアルコール分を含まないものを意味することは明らかである。しかし、補正後の請求項8にはソフトドリンクであるとの規定もアルコールを含まないとの規定もないことから、例えば「果汁エキス入り飲料」が出願当初の明細書に記載されていないアルコール分を含む「果汁エキス入り飲料」をも包含することは明らかである。そして、ソフトドリンクである飲料についての記載からアルコール分を含む飲料が自明な事項であるとは認められない。

整理番号:P06141512発送番号:309826 発送日:平成16年 8月24日

この拒絶理由通知書中で指摘した請求項以外の請求項に係る発明については、現時点では、拒絶の理由を発見しない。拒絶の理由が新たに発見された場合には拒絶の理由が通知される。

#### 最後の拒絶理由通知とする理由

1. 最初の拒絶理由通知に対する応答時の補正によって通知することが必要になった拒絶の理由のみを通知する拒絶理由通知である。

この拒絶理由通知の内容に関するお問い合わせがございましたら下記までご連絡下さい。

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Request for Participation in the Patent  
Prosecution Highway Pilot Program  
U.S. Patent Application No. 10/583,556  
Attorney Docket No. 292745US0PCT

## APPENDIX D

English-Language Translation of Explanation of Circumstances  
Concerning Accelerated Examination

Explanation KS0782

[Name of Document] The Explanation of Circumstances  
Concerning Accelerated Examination

[Destination] Commissioner of the Patent Office

[Indication of Case]

[Application Number] Japanese Patent Application No.

2003-420

[Submitting Person]

[Identification Number] 000000918

[Name or Appellation] KAO CORPORATION

[Attorney]

[Identification Number] 110000084

[Name or Appellation] The Patent Corporate Body Aruga  
Patent Office

[Representative] NAKAJIMA Toshio

[Explanation of Circumstances Concerning Accelerated  
Examination]

1. Circumstances

The accelerated examination relates to a packaged beverage disclosed in Claim 1 of the present invention, which is scheduled to be manufactured from January, 2005. As disclosed in Claim 1, the packaged beverage is a packaged beverage with a green-tea extract mixed therein, wherein a ratio of a non-polymer catechins to an oxalic acid or a salt thereof and a ratio of the non-polymer catechins to caffeine are in predetermined ranges, an oxalic acid or a salt thereof; and caffeine.

Explanation KS0782

## 2. Prior Art And Comparison

## (1) Prior Art Documents

The applicant sufficiently discloses prior art documents in Paragraphs [0002] to [0004] of the Specification. The prior art documents disclosed by the applicant are as follows.

- a. Japanese Patent Application Laid-Open No. 60-156614
- b. Japanese Patent Application Laid-Open No. 3-133928
- c. Japanese Patent Application Laid-Open No. 2002-142677
- d. Japanese Patent Application Laid-Open No. 8-298930
- e. Japanese Patent Application Laid-Open No. 8-109178
- f. Japanese Patent Application National Publication No.

10-501407

g. Japanese Patent No. 3378577

## (2) Comparison

i) The present invention discloses a packaged beverage as described in Claims.

(Claim 1) A packaged beverage with a green-tea extract mixed therein, comprising the following ingredients (A) to (C) :

- (A) 0.01 to 1.0 wt% of non-polymer catechins;
- (B) an oxalic acid or a salt thereof; and
- (C) caffeine,

wherein a content weight ratio [(B)/(A)] of the oxalic acid or the salt thereof (B) to the non-polymer catechins (A) is in a range of from 0.00005 to 0.1, and wherein a content weight ratio [(A)/(C)] of the non-polymer catechins (A) to the caffeine (C) is in a range of from 5 to 10000.

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(Claim 2) The packaged beverage according to claim 1, wherein the packaged beverage is a non-tea-based beverage.

(Claim 3) The packaged beverage according to claim 1 or 2, wherein the packaged beverage further comprises 0.001 to 0.5 wt% of sodium ions and 0.001 to 0.2 wt% of potassium ions.

(Claim 4) The packaged beverage according to any one of claims 1 to 3, wherein the packaged beverage further comprises 0.0001 to 20 wt% of a sweetener.

(Claim 5) The packaged beverage according to any one of claims 1 to 4, wherein the content weight ratio [(B)/(A)] of the oxalic acid or the salt thereof (B) to the non-polymer catechins (A) is in a range of from 0.00005 to 0.05.

(Claim 6) The packaged beverage according to any one of claims 1 to 5, wherein the content weight ratio [(A)/(C)] of the non-polymer catechins (A) to the caffeine (C) is in a range of from 10 to 10000.

(Claim 7) The packaged beverage according to any one of claims 1 to 6, wherein the pH of the packaged beverage is in a range of from 2 to 5.

(Claim 8) The packaged beverage according to any one of claims 1 to 7, wherein the green-tea extract as a raw material is obtained by removing the caffeine from a concentrate of the green-tea extract containing 20 to 90 wt% of the non-polymer catechins in a solid content, such that the content weight ratio [(A)/(C)] of the non-polymer catechins (A) to the oxalic acid or the salt thereof (C) is in a range of from 5 to 10000.

(Claim 9) The packaged beverage according to any one of

Explanation KS0782

claims 1 to 8, wherein the packaged beverage is in such a form that 300 mg or more of the non-polymer catechins can be ingested per day.

(Claim 10) The packaged beverage according to any one of claims 1 to 9, wherein the packaged beverage is filled in a transparent container.

As described above, the packaged beverage according to the present invention is obtained by mixing a green-tea extract therein to contain a high concentration of non-polymer catechins, adjusting a ratio of an oxalic acid to the non-polymer catechins to be in a specific range, and adjusting a ratio of the non-polymer catechins to caffeine to be in a specific range. By employing features as such, it is possible to obtain advantages in that the packaged beverage contains a high concentration of the non-polymer catechins, has no different taste and flavor from those of a green tea, has reduced bitterness and astringency so as to be suitable for long-term drinking, has a stability of bitterness and astringency and a good swallow feeling, remains a long-term stability of color tone during a high temperature storage in a transparent container, and is particularly useful as a non-tea-based packaged beverage.

ii)

A. The document (a) discloses that tea catechins is useful as a cholesterol level suppressor. In addition, the document (b) discloses that tea polyphenol of the tea catechins or the like is useful as an  $\alpha$ -amylase activation suppressor.

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However, the packaged beverage containing the non-polymer catechins is not disclosed in the documents (a) and (b). In addition, the object of the present invention such as a problem caused from long-term drinking, the adjustment of an ratio of an oxalic acid to the non-polymer catechins to be in a specific, and the adjustment of a ratio of the non-polymer catechins to caffeine to be in a specific range are not disclosed, or suggested.

B. The document (c) discloses a packaged beverage containing dissolved catechins of non-epi catechins (A) and epi catechins (B), wherein contents thereof are (a)  $(A) + (B) = 460$  to 2500 mg, (b)  $(A) = 160$  to 2250 mg, (c)  $(A) / (B) = 0.54$  to 0.90 per 500 mL beverage packaged in a container. In addition, the document (c) also discloses a packaged beverage manufacturing method, in which a concentrate of a green-tea extract is mixed.

However, in the document (c), the most important features of the present invention, that is, the adjustment of a ratio of an oxalic acid to the non-polymer catechins to be in a specific range and the adjustment of a ratio of the non-polymer catechins to caffeine to be in a specific range are not disclosed.

C. The document (d) disclose a tea beverage having reduced astringency by saccharide distribution of a polyphenol and, more specifically, a method of manufacturing a tea extract or a tea beverage having reduced astringency by mixing a tea extract or a tea beverage with at least one of dextrin, cyclo-dextrin, and starch and reacting cyclo-malto dextrin glucanotransferase thereon.

In addition, the document (e) discloses a method of manufacturing a low-caffeine tea polyphenol by dissolving or suspending a tea extract in water or a water-containing organic solvent and contacting it with a synthetic adsorptive under an alkali condition to remove caffeine.

However, in the documents (d) and (e), the object of the present invention such as improvement of taste and flavor invulnerable to long-term drinking, improvement of a stability of bitterness and astringency and a swallow feeling, and improvement of a stability of color tone during a high temperature storage of the packaged beverage containing the non-polymer catechins are not disclosed. In addition, in the documents (d) and (e), the most important features of the present invention, that is, the adjustment of a ratio of an oxalic acid to the non-polymer catechins to be in a specific range and the adjustment of a ratio of the non-polymer catechins to caffeine to be in a specific range are not disclosed, and any hint thereof dose not exist.

D. The document (f) discloses a fluid composite comprising (a) 0.01 to 0.35% of flavanol, (b) 0.01 to 0.3% of sodium ions, (c) 0.005 to 0.08% of potassium ions, (d) 0.1 to 20% of a carbohydrate substance supplying (i) 0.05 to 10.0% of fructose and (ii) 0.05 to 10.0% of glucose, and (e) water. As an example of the flavanol, catechins is disclosed therein.

However, in the document (f), the object of the present invention such as improvement of taste and flavor invulnerable to long-term drinking, improvement of a stability of bitterness

## Explanation KS0782

and astringency and a swallow feeling, and improvement of a stability of color tone during a high temperature storage of the packaged beverage containing the non-polymer catechins are not disclosed. In addition, in the document (f), the most important features of the present invention, that is, the adjustment of a ratio of an oxalic acid to the non-polymer catechins to be in a specific range and the adjustment of a ratio of the non-polymer catechins to caffeine to be in a specific range are not disclosed, or suggested.

E. The document (g) discloses a beverage with a concentrate or a refined material of a tea extract therein, wherein the beverage contains (A) non-polymer catechins and (B) a quinic acid, and wherein a content weight ratio  $[(B)/(A)]$  of the ingredient (B) to the ingredient (A) is in a range of from 0.01 to 1.0.

Although a residing feeling unique to the catechins after drinking is disclosed, in the document (g), the object of the present invention such as improvement of taste and flavor invulnerable to long-term drinking, improvement of a stability of bitterness and astringency and a swallow feeling, and improvement of a stability of color tone during a high temperature storage of the packaged beverage containing the non-polymer catechins are not disclosed. In addition, in the document (g), the most important features of the present invention, that is, the adjustment of a ratio of the oxalic acid to the non-polymer catechins to be in a specific range and the adjustment of a ratio of the non-polymer catechins to the

## Explanation KS0782

caffeine to be in a specific range are not disclosed, or suggested.

F. As described above, in any one of the documents (a) to (g), the important features of the present invention, that is, the adjustment of a ratio of an oxalic acid to the non-polymer catechins to be in a specific range and the adjustment of a ratio of the non-polymer catechins to caffeine to be in a specific range are not disclosed, or suggested.

According to the present invention, as disclosed in Paragraphs [0011] and [0012] and Table 1 of the specification, a packaged beverage obtained by adjusting the ratio  $[(B)/(A)]$  of the oxalic acid or the salt thereof (B) to the non-polymer catechins (A) to be in a range of from 0.00005 to 0.1 and adjusting the ratio  $[(A)/(C)]$  of the non-polymer catechins (A) to the caffeine (C) be in a range of from 5 to 10000 can have useful advantages such as a long-term drinking ability, a stability of bitterness and astringency, a good swallow feeling, and a stability of color tone in comparison with packaged beverages having ratios deviating from the aforementioned ranges (see Comparison Examples 1 and 3 in Table 1).

Therefore, it is obvious that the present invention cannot be easily derived from any combinations of the documents (a) to (g) by the ordinarily skilled in the art.

【書類名】 早期審査に関する事情説明書

【あて先】 特許庁長官 殿

【事件の表示】

【出願番号】 特願2003-420910

【提出者】

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【代表者】 中嶋 俊夫

【早期審査に関する事情説明】

1. 事情

請求項1に記載されているように、緑茶抽出物を配合し、非重合体カテキン類、シユウ酸又はその塩及びカフェインを一定の比率で含有する容器詰飲料を、平成17年1月より生産開始する予定の実施関連発明である。

2. 先行技術及び対比説明

(1) 文献名

出願人は明細書段落(0002)～(0004)において先行技術を十分に開示している。現在出願人が把握している先行技術文献は以下の通りである。

- a. 特開昭60-156614号公報
- b. 特開平3-133928号公報
- c. 特開2002-142677号公報
- d. 特開平8-298930号公報
- e. 特開平8-109178号公報
- f. 特表平10-501407号公報
- g. 特許第3378577号公報

## (2) 対比説明

i) 本願発明は、特許請求の範囲に記載されたとおりの、

「 (請求項 1) 緑茶抽出物を配合した容器詰飲料であって、次の成分 (A) 、 (

B) 及び (C) 、

0. 01~1. 0 重量%、

(A) 非重合体カテキン類

(B) シュウ酸又はその塩

(C) カフェイン

を含有し、(B) シュウ酸又はその塩と (A) 非重合体カテキン類との含有重量比 [(B) / (A)] が 0. 00005~0. 1 であり、且つ (A) 非重合体カテキン類と (C) カフェインとの含有重量比 [(A) / (C)] が 5~10000 である容器詰飲料。

(請求項 2) 飲料が非茶系飲料である請求項 1 記載の容器詰飲料。

(請求項 3) 更にナトリウムイオン 0. 001~0. 5 重量%、及びカリウムイオ

ン 0. 001~0. 2 重量%を含有する請求項 1 又は 2 記載の容器詰飲料。

(請求項 4) 更に甘味料を 0. 0001~20 重量% 含有する請求項 1~3 のいずれか 1 項記載の容器詰飲料。

(請求項 5) (B) シュウ酸又はその塩と (A) 非重合体カテキン類との含有重量比 [(B) / (A)] が 0. 00005~0. 05 である請求項 1~4 のいずれか 1 項記載の容器詰飲料。

(請求項 6) (A) 非重合体カテキン類と (C) カフェインとの含有重量比 [(A) / (C)] が 10~10000 である請求項 1~5 のいずれか 1 項記載の容器詰飲料。

(請求項 7) pH が 2~5 である請求項 1~6 のいずれか 1 項記載の容器詰飲料。

(請求項 8) 原料緑茶抽出物が、固形分中に非重合体カテキン類を 20~90 重量% 含有する緑茶抽出物の濃縮物から、(A) 非重合体カテキン類と (C) カフェインとの含有重量比 [(A) / (C)] が 5~10000 の範囲になようにカフェインを除去したものである請求項 1~7 のいずれか 1 項記載の容器詰飲料。

(請求項 9) 非重合体カテキン類として 1 日 300 mg 以上摂取できる形態である請求項 1~8 のいずれか 1 項記載の容器詰飲料。

(請求項 10) 透明容器に充填されたものである請求項 1～9 のいずれか 1 項記載の容器詰飲料。」  
に係るものである。

本願発明の容器詰飲料は、上記の如く、緑茶抽出物を配合して非重合体カテキン類を高濃度に含有し、非重合体カテキン類とシュウ酸とカフェインの比率を一定範囲に調整したことを特徴とするものであり、このような構成を採用することにより、「非重合体カテキン類を高濃度含有し、かつ緑茶風味の他異味・異臭がなく、苦味、渋味が低減され長期間の飲用に適し、また苦味、渋味の安定性及び喉越しに優れ、また、透明容器に充填して高温保存しても長期間色調が安定であり、特に非茶系容器詰飲料として有用である」という効果を有するものである。

ii) イ. 文献 a には、茶カテキン類がコレステロール上昇抑制剤として有用であることが記載されている。また、文献 b には、茶カテキン等の茶ポリフェノールが  $\alpha$ -アミラーゼ活性阻害剤として有用であることが記載されている。

しかし、これらの文献 a 及び b のいずれにも、非重合体カテキン類を含有する容器詰飲料については全く記載されておらず、長期間飲用した場合の問題点等の本願発明の課題及び非重合体カテキン類とシュウ酸とカフェインの比率を一定の範囲に調整することについての何の記載がないばかりか示唆さえ存しない。

ロ. 文献 c には、(A) 非エピ体カテキン類及び (B) エピ体カテキン類のカテキン類を溶解して含有し、それらの含有量が容器詰めされた飲料 500mL 当り、(イ) (A) + (B) = 460～2500mg、(ロ) (A) = 160～2250mg、(ハ) (A) / (B) = 0.54～0.90 である容器詰飲料が記載されている。そして文献 c には、容器詰飲料の製造にあたり、緑茶抽出物の濃縮物を配合することが記載されている。

しかしながら、文献 c には、本願発明の最も重要な構成である、非重合体カテキン類とシュウ酸とカフェイン比率を一定範囲に調整することについては、何の記載もない。

ハ. 文献 d には、ポリフェノール類を配糖化することにより渋味を低減した茶飲料、さらに詳細には茶抽出物または茶飲料をデキストリン、サイクロデキストリンおよび澱粉の

うちの少なくとも1種とを混ぜ、これにサイクロマルトデキストリンガルカノトランスクエラーゼを作用させることを特徴とする渋みを低減した茶抽出物または茶飲料の製造法が記載されている。

また、文献eには、茶抽出物を水または含水有機溶媒中に溶解または懸濁し、これをアルカリ性条件下、合成吸着剤と接触させてカフェインを吸着除去することを特徴とする低カフェイン茶ポリフェノールの製造法が記載されている。

しかしながら、文献d及びeのいずれにも、本願発明の課題である、非重合体カテキン類含有容器詰飲料についての長期飲用に耐えられる風味の向上、苦味渋みの安定性及び喉ごしの向上、高温保存時の色調の改善等については全く記載されていない。そして、文献d及びeのいずれにも、本願発明の最も重要な構成である、非重合体カテキン類とシュウ酸とカフェイン比率を一定の範囲に調整することについては何の記載もないばかりか示唆され存しない。

二、文献fには、(a) 0.01~0.35%フラバノール (b) 0.01~0.3%ナトリウムイオン (c) 0.005~0.08%カリウムイオン (d) (i) 0.05~10.0%フルクトース (ii) 0.05~10.0%グルコースを供給する0.1~20%炭水化物、及び(e) 水を含んでなる流体組成物が記載され、当該フラバノールの例としてはカテキン類が記載されている。

しかしながら、文献fには、本願発明の課題である、非重合体カテキン類含有容器詰飲料についての長期飲用に耐えられる風味の向上、苦味渋みの安定性及び喉ごしの向上、高温保存時の色調の改善等については全く記載されていない。そして、文献fには、本願発明の最も重要な構成である、非重合体カテキン類とシュウ酸とカフェインの比率を一定の範囲を調整することについては、何の記載もないばかりか示唆され存しない。

三、文献gには、茶抽出物の濃縮物又は精製物を配合した(A) 非重合体カテキン類 (B) キナ酸を含有し、成分(A)と(B)の含有重量比[(B)/(A)]が0.01~1.0である飲料が記載されている。

しかしながら、文献gには、飲用後のカテキン類固有の残留感については記載されているものの、本願発明の課題である、非重合体カテキン類含有容器詰飲料についての長期飲

用に耐えられる風味の向上、苦味渋味の安定性、喉ごしの良さ、高温保存時の色調の安定性等については全く記載されていない。そして、文献<sup>1</sup>には、本願発明の構成である、非重合体カテキン類とカフェインとの含有量比を一定範囲に調整することについては、何の記載もないばかりか示唆さえ存しない。

ヘ、前記の如く、文献a～gのいずれにも、非重合体カテキン類とシュウ酸とカフェインの比率を一定の範囲に調整するという本願発明の重要な構成については何の記載もないばかりか示唆さえ存しない。

そして、本願発明においては、明細書段落(0011)、(0012)及び表1に記載の如く、非重合体カテキン類(A)とシュウ酸又はその塩(B)とカフェイン(C)の間の比率、(B)/(A)を0.00005～0.1、(C)/(A)を5～10000に調整した容器詰飲料が、当該比率がこの範囲外の容器詰飲料(表1中の比較例1～3参照)に比べて、長期間の飲用性、苦味渋味の安定性、喉ごしの良さ及び色調の安定性において顕著に優れるという有利な効果を奏するものである。

従って、本願発明は、文献a～gに記載の発明を組み合せても、当業者にとって容易に想到できない発明であることが明らかである。

**Disclaimer:**

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**Notes:**

1. Untranslatable words are replaced with asterisks (\*\*\*\*).
2. Texts in the figures are not translated and shown as it is.

Translated: 21:47:46 JST 09/25/2007

Dictionary: Last updated 09/07/2007 / Priority:

### Decision to Grant a Patent

Application number: Application for patent 2003-420910

Date of Drafting: Heisei 16(2004) October 18

Patent examiner: MURAKAMI, Kimitaka 8827 4N00

Title of invention: Bottled beverage

The number of claims: 8

Applicant: KAO CORPORATION

Representative: THE PATENT CORPORATE BODY ARUGA PATENT OFFICE (and 6 others)

This application is to be granted a patent as there is no reason for refusal.

Director General(p.p.) Director(p.p.) Examiner Assistant examiner Manager for Determination of Classification UCHIDA, Junko MURAKAMI, Kimitaka MURAKAMI, Kimitaka 8115 8827 8827

1. Distinction of Patent: Usually
2. Reference documents: \*\*
3. Application of Patent Law, Section 30: Nothing
4. Change of Title of Invention: Nothing
5. International Patent Classification (IPC)

A23F 3/16 , A23L 2/38 C, A23L 2/00 F

6. Patent Classification Additionally Assigned.

Edition code 4

7. Deposition of Microorganism

8. Indication that Retroactivity of Division/conversion Is Prohibited.

Decision to Grant a Patent(Memorandum)

Application number: Application for patent 2003-420910

1. Technical Fields to Be Searched (IPC, 7th Edition, DB Name)

A23F 3/00 -A23F 5/50

2. Reference patent documents

JP,06-311847,A (JP, A) JP,2003-169603,A (JP, A) Patent Publication Heisei 10-501407 (JP, A)

3. Reference books and magazines

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[Translation done.]